

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ISAIAH N. WILLIAMS,

No. C 07-04464 CW (PR)

Plaintiff,

v.

D. WILLIAMS,

Defendant.

ORDER (1) GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
DISCOVERY MOTION; (2) REFERRING
DISCOVERY MATTER TO MAGISTRATE
JUDGE; (3) GRANTING PLAINTIFF'S
STAY MOTION; (4) DENYING
PLAINTIFF'S MOTION FOR APPOINTMENT
OF COUNSEL; AND (5) SETTING NEW
BRIEFING SCHEDULE

BACKGROUND

Plaintiff Isaiah N. Williams, a state prisoner, has filed a pro se civil rights action pursuant to 42 U.S.C. § 1983 alleging constitutional rights violations while incarcerated at Pelican Bay State Prison (PBSP).

In a January 21, 2010 Order, the Court found that Plaintiff's allegations stated cognizable Eighth Amendment, retaliation and due process claims against Defendant. The Court dismissed Plaintiff's equal protection cause of action for failure to state a claim. The Court characterized Plaintiff's Eighth Amendment claim as one of deliberate indifference to safety. The Court inadvertently failed to mention Plaintiff's allegations of excessive force as part of his Eighth Amendment claim.

On March 24, 2010, Defendant filed her answer to the complaint, in which she denied, among other things, that she used excessive force. (Answer at 3.)

On June 10, 2010, Plaintiff filed a "Motion for Appointment of Counsel, Motion for Temporary Appointment of Counsel, Motion for Postponement of Deposition" (docket no. 39).

1 On June 30, 2010, Defendant filed a motion for summary
2 judgment as to the claims of deliberate indifference to safety,
3 retaliation and due process on the grounds that: (1) she was not
4 deliberately indifferent to Plaintiff's safety; (2) she did not
5 retaliate against Plaintiff for exercising his rights; (3) she did
6 not prevent his presence at the disciplinary hearing; and (4) she
7 is entitled to qualified immunity. (Mot. Summ. for J. at 3.)

8 Perhaps because the Court failed to mention excessive force as
9 part of Plaintiff's cognizable Eighth Amendment claim, Defendant
10 did not specifically move on that theory. Therefore, Defendant may
11 file a supplement to the motion for summary judgment if she
12 believes the excessive force claim can be resolved by summary
13 judgment.

14 On September 23, 2010, Plaintiff filed a "Motion for an Order
15 Compelling Discovery" (docket no. 51). Plaintiff also filed a
16 "Motion for Stay Summary Judgment and/or to Delay/Extend Deadline
17 for Plaintiff's Response to Defendant's Motion for Summary
18 Judgment" (docket no. 50). On October 19, 2010, Defendant filed an
19 opposition to Plaintiff's motions.

20 Having read and considered the papers submitted by the
21 parties, the Court:

22 1. DENIES in part and GRANTS in part Plaintiff's discovery
23 motion (docket no. 50);

24 2. refers the discovery matter below to Magistrate Judge
25 Laurel Beeler of the Oakland Division of this Court; and orders
26 Defendant (a) to submit to Magistrate Judge Beeler for an in camera
27 review answers to certain interrogatories and document requests and
28 (b) to provide Plaintiff with answers to other interrogatories and

document requests, as directed below;

3. GRANTS Plaintiff's stay motion (docket no. 51);

4. DENIES Plaintiff's motion for appointment of counsel (docket no. 39); and

5. directs the parties to abide by the briefing schedule outlined below.

DISCUSSION

I. Plaintiff's Discovery and Stay Motions

A. Evidence Pertaining to the Excessive Force Claim

In the following discovery requests, Plaintiff appears to be seeking Defendant's personnel file:

Document Requests

(2) Any and all documents in the Defendant's personnel file pertaining to any reprimands for misbehavior, suits against her, complaints made against her by staff or inmates, or anything that could be deemed relevant to the allegations made by the Plaintiff in this case.

(7) Any and all documents of similar control booth operator's shooting that the Defendant has been involved in during her time as a correctional officer.

Plaintiff has also requested answers to following interrogatories:

Interrogatories

(1) Has the defendant ever threatened or been accused of threatening an inmate in any way while working as a correctional officer?

(2) What did the defendant mean and what was her intent when she told the plaintiff on August 12, 2006: "we can play this any way you want." And "Aren't you up for inactive"?

(5) To the defendant's knowledge, what relationship exists between white and black inmates? Does she agree that these two groups have a history of

1 violence between each other.

2 (8) Why did the defendant, after shooting the
3 plaintiff the first time, ignore orders by the
4 ground level officers to open the section door,
5 which would allow them to quell the incident with
6 less harmful force, and instead reload her weapon
7 (3) additional times and shoot the plaintiff?

8 (9) How many shooting has the defendant been involved
9 in while acting as the control booth operator?
10 Of these incidents, how many was the defendant
11 the sole control booth operator [sic]? Were any
12 complaints made against the defendant for any of
13 these incidents?

14 (10) Has the defendant ever intentionally or been
15 accused of intentionally setting up an
16 altercation of any kind between inmates while
17 working as a correctional officer?

18 (11) Has the defendant ever retaliated or been accused
19 of retaliation of any kind while working as a
20 correction officer?

21 (12) On September 3, 2006 did the defendant, instead
22 of doing her duty and asking the plaintiff if he
23 would like to attend his 115 hearing, ask the
24 plaintiff "Have you gone to your 115 hearing
25 yet?", and when plaintiff stated: "No", did the
26 defendant ask him: "Do you have anything you want
27 to say to me"?

28 (13) On September 3, 2006 did the defendant tell
correctional officer M. Potter that the plaintiff
refused to attend his 115 hearing and that he
refused to sign the refusal form?

Portions of Defendant's personnel file and answers to the
interrogatories above may be relevant to Plaintiff's excessive
force claim; therefore, the discovery requests listed above are
GRANTED in part. The Court directs Defendant to submit for in
camera review all excessive force complaints against Defendant
within the last five years and the answers to the interrogatories
above. The response shall be produced to Magistrate Judge Beeler,
to whom this discovery matter is referred. Magistrate Judge Beeler
will then weigh the privilege asserted by Defendant against

1 Plaintiff's interest in having access to the personnel file as well
2 as the answers to the interrogatories above. See Kelly v. City of
3 San Jose, 114 F.R.D. 653, 660 (N.D. Cal. 1987).

4 In the following discovery requests, Plaintiff appears to be
5 seeking information and documents relating to PBSP's rules and
6 procedures:

7 Interrogatories

8 (3) What were the procedures on August 16, 2006
9 regarding the Control Booth operator's duties
involving inmate movement?

10 (4) What were the acceptable methods available to
11 control Booth operators on and up to August 16,
2006; e.g. cups used to cover the release button/
12 cell button of inmate cells, which were used by
correctional officers while doing their duties?
13 What were the methods used by the defendant on and
up to August 16, 2006?

14 (6) What were the procedures for use of force by a
15 correctional officer during an incident
particularly by a control Booth operator, on and up
16 to August 16, 2006?

17 Document Request

18 (4) Any and all documents pertaining to the rules and
19 procedures, as well as acceptable methods used by
control Booth Operators regarding inmate movement
and use of force.

20 The Court GRANTS these discovery requests. However,
21 Defendant's answers to the interrogatories and the document request
22 above shall be produced for in camera review by Magistrate Judge
23 Beeler due to Defendant's security concerns.

24 The Court construes the following discovery requests as an
25 inquiry relating to potential witnesses to the events:

26 Interrogatory

27 (15) State the name and address or otherwise identify
28 and locate any person, who to the defendant's or
her attorney's knowledge, claims to know of facts

relevant to the conduct or events described in this case.

Document Request

- (3) Identify and attach a copy of any and all documents showing who was on duty in D-Facility 1-Block at the time of the incidents indicated herein, as well as a list of responding staff to the incident of August 16, 2006.

The Court GRANTS these discovery requests and directs Defendant to provide Plaintiff with the answer to the interrogatory and document request above.

The Court construes the following discovery request as inquiring whether Defendant has incident reports that have not been provided to Plaintiff:

Document Request

- (1) Any and all documents obtained regarding this case that were not served upon the defendant by Plaintiff.

The Court GRANTS this discovery request and directs the Defendant to provide Plaintiff with copies of any incident reports relating to this incident.

B. Documents Already Provided to Plaintiff and Discovery Calling for a Legal Conclusion

Defendant's counsel provided Plaintiff with a copy of Operational Procedure No. 222, Security Housing Unit, Paragraph I, pertaining to Cell Searches. Defendant's counsel also explained to Plaintiff that Title 15, Section 3320 describes the California Department of Corrections and Rehabilitation rules for disciplinary hearings. (Id.) Therefore, the following discovery requests are DENIED because they have been satisfied:

Interrogatory

- (14) Does an inmate have a right to attend a 115 hearing

1 irregardless of whether or not he is guilty of the
2 charges?

3 Document Requests

4 (5) Any and all documents pertaining to the rules and
5 procedures governing the inmate's ability to attend
6 a disciplinary (115) hearing, including staffs duty
7 to inform of the hearing etc. as it pertains to
8 this case;

9 (6) Any and all documents pertaining to the rules and
10 procedures regarding the search of an inmates cell
11 by correctional officers.

12 Finally, the following discovery request calls for a legal
13 conclusion:

14 Interrogatory

15 (7) Is it true that correctional officers are only
16 allowed to use the minimum amount of force
17 necessary to quell an incident?

18 Accordingly, this discovery request is also DENIED.

19 II. Plaintiff's Request for Appointment of Counsel

20 Plaintiff has filed multiple motions for appointment of
21 counsel. His previous requests have been denied. For the reasons
22 stated in the Court's previous denials, his present motion for
23 appointment of counsel (docket no. 39) is DENIED.

24 In addition, Plaintiff also requests temporary appointment of
25 counsel at his deposition as well as a "postponement" of his
26 deposition "until Plaintiff has time to confer with counsel."
27 (Pl's Mot. for Appt. of Counsel at 2.) Plaintiff's deposition was
28 taken on June 11, 2010; therefore, his requests are DENIED as moot.

CONCLUSION

For the reasons stated above, the Court orders as follows:

1. Plaintiff's "Motion for an Order Compelling Discovery"
(docket no. 51) is GRANTED in part and DENIED in part.

1 2. Plaintiff's "Motion for Stay Summary Judgment and/or to
2 Delay/Extend Deadline for Plaintiff's Response to Defendant's
3 Motion for Summary Judgment" (docket no. 50) is GRANTED.

4 3. The discovery matter in this action is referred to
5 Magistrate Judge Laurel Beeler. No later than fourteen (14) days
6 from the date of this Order, Defendant is directed to submit for
7 Magistrate Judge Beeler's in camera review:

8 a. all excessive force complaints against Defendant
9 within the last five years (document requests (2) and (7));

10 b. answers to interrogatories (1), (2), (3), (4), (5),
11 (6), (8), (9), (10), (11), (12) and (13); and

12 c. PBSP's rules and procedures regarding control booth
13 operator duties and use of force policy (document request (4)).

14 4. No later than fourteen (14) days from the date of this
15 Order, Defendant is also directed to send Plaintiff:

16 a. answers to interrogatory (15); and

17 b. copies of incident reports relating to this
18 incident, documents showing who was on duty at the time of the
19 incident, and a list of responding staff (document requests (1) and
20 (3)).

21 5. All remaining discovery requests, including
22 interrogatories (7) and (14) and document requests (5) and (6), are
23 DENIED.

24 6. Plaintiff's "Motion for Appointment of Counsel, Motion
25 for Temporary Appointment of Counsel, Motion for Postponement of
26 Deposition" (docket no. 39) is DENIED.

27 7. The parties shall abide by the following briefing
28 schedule:

1 a. No later than twenty-eight (28) days from the date
2 of this Order, Defendant may file a supplement to her motion for
3 summary judgment if she believes the excessive force claim can be
4 resolved by summary judgment. If Defendant is of the opinion that
5 it cannot be resolved by summary judgment, Defendant shall so
6 inform the Court as soon as possible, but no later than the date
7 the supplement to the motion for summary judgment is due. All
8 papers filed with the Court shall be promptly served on Plaintiff.

9 b. Plaintiff's opposition to the motion for summary
10 judgment and any supplemental motion shall be filed with the Court
11 and served on Defendant no later than twenty-eight (28) days after
12 the date on which Defendant files her supplemental motion or gives
13 notice that she does not intend to file a supplemental motion.

14 c. If Defendant wishes to file a reply brief, she shall
15 do so no later than fourteen (14) days after the date Plaintiff's
16 opposition is filed.

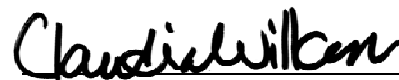
17 d. The motion for summary judgment shall be deemed
18 submitted as of the date the reply brief is due.

19 8. The Clerk of the Court shall provide a copy of this Order
20 to Magistrate Judge Beeler.

21 9. This Order terminates Docket nos. 39, 50 and 51.

22 IT IS SO ORDERED.

23 Dated: 12/9/2010



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ISAIAH N WILLIAMS,

Plaintiff,

v.

D WILLIAMS et al,

Defendant.

Case Number: CV07-04464 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on December 9, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Isaiah Noel Williams K-33769
Pelican Bay State Prison
P.O. Box 7000
5905 Lake Earl Drive
Crescent City, CA 95531

Dated: December 9, 2010

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk

cc: LB